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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 OUR CHILDREN'S EARTH FOUNDATION, a  
13 non-profit corporation,

14 Plaintiff,

15 v.

16 ANDREW WHEELER, in his official capacity  
17 as Acting Administrator of the United States  
18 Environmental Protection Agency,

19 Defendant.

Civil Case No. \_\_\_\_\_

20 **COMPLAINT FOR DECLARATORY  
21 AND INJUNCTIVE RELIEF**

22 **(Clean Air Act, 42 U.S.C. sections 7401 et  
23 seq.)**

1 OUR CHILDREN’S EARTH FOUNDATION (“OCE”) alleges as follows:

2 **INTRODUCTION**

3 1. This is a suit to compel the Administrator of the United States Environmental Protection  
 4 Agency (“EPA”) to take actions mandated by the Clean Air Act, 42 U.S.C. §§ 7401 *et seq* (“CAA” OR  
 5 “the Act”) to protect public health and the environment from certain sources of harmful and toxic air  
 6 pollutants. The Act requires the Administrator to review and revise certain emissions standards, referred  
 7 to as New Source Performance Standards (“NSPS”), from these sources every eight years. 42 U.S.C. §  
 8 7411(b)(1)(B). The Act also requires the Administrator to “review, and revise as necessary (taking into  
 9 account developments in practices, processes, and control technologies)” the emission standards for  
 10 hazardous air pollutants (“NESHAPs”) promulgated under section 112(d) no later than eight years after  
 11 such standards are initially promulgated. 42 U.S.C. § 7412(d)(6). In addition, eight years after  
 12 promulgating section 112(d) standards, the Administrator either must promulgate additional “residual  
 13 risk” standards under CAA section 112(f)(2), due to the risk remaining after the application of the  
 14 section 112(d) standards, or must determine that residual risk standards are not required to protect  
 15 human health or the environment. 42 U.S.C. § 7412(f)(2). As alleged herein, the Administrator has  
 16 missed the statutory deadlines to complete one or more of the required regulatory duties for six (6)  
 17 categories of sources of harmful and/or toxic air pollution. Specifically, the Administrator has not taken  
 18 the actions required by CAA section 111(b)(1)(b) for sources identified in Table A, below:

19

20 **TABLE A: SOURCE CATEGORIES REQUIRING NSPS REVISIONS**

Source Category	C.F.R. citation for NSPS	Date of Promulgation of NSPS	Deadline for Action Pursuant to § 111(b)(1)(B)
Bulk Gasoline Terminals	40 C.F.R. Part 60, Subpart XX,	August 18, 1983	August 18, 1991
Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants	40 C.F.R. Part 60, Subparts AA & AAa	October 31, 1984	October 31, 1992

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27 The Administrator has not taken the actions required by section 112(d)(6) for each of the categories of  
 28 sources of hazardous air pollutants enumerated in **Table B**, below:

<b>TABLE B: SOURCE CATEGORIES REQUIRING NESHAP REVIEW AND REVISIONS</b>			
<b>Source Category</b>	<b>C.F.R. citation for NESHAP</b>	<b>Date of Promulgation of NESHAP</b>	<b>Deadline for Action Pursuant to § 112(d)(6)</b>
Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)	40 C.F.R. Part 63, Subpart R	April 6, 2006	April 6, 2014
Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	40 C.F.R. Part 63, Subpart BBBBBB	January 10, 2008	January 10, 2016
Iron and Steel Foundries Area Sources	40 C.F.R. Part 63; Subpart ZZZZZ	January 2, 2008	January 2, 2016
Wood Preserving Area Sources	40 C.F.R. Part 63, Subpart QQQQQQ	July 16, 2007	July 16, 2015

2. Due to the Defendant Administrator's failures to act, Plaintiff OCE seeks both a determination that the Defendant Administrator's failures to perform each action required by CAA section 111(b)(1)(B) and CAA section 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B) and 7412(d)(6), violate the CAA, and an order to compel the Administrator to take each required action in accordance with an expeditious deadline set by this Court.

### **JURISDICTION**

3. This action arises under CAA sections 111(b)(1)(B) and 112(d)(6). 42 U.S.C. §§ 7411(b)(1)(B) and 7412(d)(6). This Court has jurisdiction over this action pursuant to § 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may order the Administrator to perform the requisite acts and duties, may issue a declaratory judgment, and may grant further relief pursuant to § 304(a), 42 U.S.C. § 7604(a), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and 28 U.S.C. § 1361. Plaintiff has a right to bring this action pursuant to § 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. §§ 701-06.

1 4. By certified letter to the Administrator sent May 21, 2018, Plaintiff gave notice of this  
2 action as required by § 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54,  
3 §§ 54.1-.3 (Dec. 9, 1971).

4 **VENUE**

5 5. Venue is vested in this Court under 28 U.S.C. § 1391(e) because the Plaintiff resides in  
6 this district and no real property is involved in the action and a substantial part of the actions giving rise  
7 to this action occurred within this district.

8 **INTRADISTRICT ASSIGNMENT**

9 6. Intradistrict assignment of this matter to the San Francisco Division of the Court is  
10 appropriate pursuant to Civil Local Rule 3-2(d) because Our Children’s Earth Foundation’s principal  
11 counsel resides in San Francisco and Our Children’s Earth Foundation’s principal place of business is  
12 located in Napa, California.

13 **PARTIES**

14 7. Plaintiff Our Children’s Earth Foundation is a nonprofit organization existing under the  
15 laws of the State of California. OCE brings this action on behalf of itself and its members and  
16 constituents. OCE advocates for protection from toxic air pollution in the State of California and  
17 nationally. OCE engages in public education, advocacy, and community organizing in order to bring  
18 awareness about the effects of toxic chemicals on human health and the environment, to reduce  
19 individuals’ and communities’ exposure to pollution, and to protect the people from harm.

20 8. Defendant Andrew Wheeler is the Acting Administrator of the EPA. In that role he is  
21 charged with the duty to uphold the CAA and to take required regulatory actions according to the  
22 schedules established therein.

23 **LEGAL FRAMEWORK**

24 9. The CAA has the purpose “to protect and enhance the quality of the Nation’s air  
25 resources so as to promote the public health and welfare and the productive capacity of its population.”  
26 42 U.S.C. § 7401(b)(1).

27 10. A “primary goal” of the Act is “pollution prevention.” 42 U.S.C. § 7401(c). Congress  
28 found the Act to be necessary in part because “the growth in the amount and complexity of air pollution

1 brought about by urbanization, industrial development, and the increasing use of motor vehicles, has  
2 resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and  
3 livestock, damage to and the deterioration of property, and hazards to air and ground transportation.” 42  
4 U.S.C. § 7401(a)(2).

5 11. To accomplish its objectives, the Act prescribes a regulatory framework within which  
6 EPA is required to set technology and risk-based standards by specific deadlines to reduce emissions of  
7 hazardous air pollutants and harm to health and the environment. 42 U.S.C. § 7412.

8 12. In the 1990 Clean Air Act Amendments, Congress established new requirements for EPA  
9 to control toxic air pollution. *Id.* By statute, Congress listed 189 hazardous air pollutants for regulation,  
10 and required EPA to list every other compound “known to cause or [that] may reasonably be anticipated  
11 to cause adverse effects to human health or adverse environmental effects.” 42 U.S.C. § 7412(b)(1),  
12 (b)(3)(B); see also 42 U.S.C. § 7412(c)(6).2. The term “hazardous air pollutant” is defined as “any air  
13 pollutant listed pursuant to [section 112(b)].” 42 U.S.C. § 7412(a)(6) (citing 42 U.S.C. § 7412(b)).  
14 Currently, 187 hazardous air pollutants are listed for regulation. EPA, Technology Transfer Act’s  
15 requirement that EPA “identify not less than 30 hazardous air pollutants which ... present the greatest  
16 threat to public health in the largest number of urban areas,” 42 U.S.C. § 7412(k)(3), EPA published an  
17 “Integrated Urban Air Toxics Strategy” that listed 33 pollutants, including arsenic compounds, benzene,  
18 cadmium compounds, formaldehyde, and mercury compounds. National Air Toxics Program: The  
19 Integrated Urban Strategy, 64 Fed. Reg. 38,706, 38,715 tbl.1 (July 19, 1999).

20 13. The Act requires EPA to list categories of major sources of hazardous air pollutants. 42  
21 U.S.C. § 7412(c)(1). A “major source” is defined as “any stationary source or group of stationary  
22 sources located within a contiguous area and under common control that emits or has the potential to  
23 emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25  
24 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. § 7412(a)(1).

25 14. EPA must then promulgate emission standards for each listed category or subcategory of  
26 major sources of hazardous air pollutants. *Id.* § 7412(d). These standards are often referred to as  
27 “maximum achievable control technology” or “MACT” standards.  
28

1           15.     Once the Administrator has promulgated emission standards pursuant to section 112(d)  
2 for a source category, “[t]he Administrator shall review, and revise as necessary (taking into account  
3 developments in practices, processes, and control technologies), emission standards promulgated under  
4 this section no less often than every 8 years.” *Id.* § 7412(d)(6). This provision requires the Administrator  
5 either to promulgate revised section 112(d) standards or to issue a final determination not to revise the  
6 existing standards based upon a published finding that revision is not “necessary” to ensure the emission  
7 standards satisfy section 112(d) of the Act. *Id.*

8           16.     The Act applies § 307(d) rulemaking requirements to “the promulgation or revision of  
9 any ... emission standard or limitation under section 7412(d) of this title” and “any standard under  
10 section 7412(f) of this title,” among others. *Id.* § 7607(d)(1)(C).

11           17.     Thus, to fulfill its section 112(d)(6) duties, EPA must provide public notice, consider  
12 public comments received, perform all other requirements described in § 307(d), 42 U.S.C. § 7607(d),  
13 and promulgate a final rule or determination.

14           18.     Section 112(d) standards become effective “upon promulgation.” See 42 U.S.C. §  
15 7412(d)(10) *see also* 42 U.S.C. § 7412(i) (setting compliance schedule for section 112(d) standards).

16 **FACTS**

17 **Failure to Review NSPS**

18           19.     The Administrator promulgated NSPS for each of the Source Categories on the dates  
19 specified in Paragraph 1, Table A (column entitled “Date Of Promulgation”), above.

20           20.     The Administrator promulgated NESHAPs for each of the Source Categories on the dates  
21 specified in Paragraph 1, Table B (column entitled “Date Of Promulgation”), above.

22           21.     The Administrator was required to take final action to fulfill its CAA section  
23 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), duties for each of the Source Categories by the dates specified  
24 in Paragraph 1, Table B (column entitled “Deadline For Action Pursuant To section 111(b)(1)(B)”  
25 above, *i.e.*, at least every eight years.

26           22.     The Administrator was required to take final action to fulfill its CAA section 112(d)(6),  
27 42 U.S.C. § 7412(d)(6), duties for each of the Source Categories by the dates specified in Paragraph 1,  
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1 Table A (column entitled “Deadline For Action Pursuant To section 112(d)(6)”), above, *i.e.*, “within 8  
2 years after promulgation” and “no less often than every 8 years.”

3 23. Bulk Gasoline Terminals

4 a. More than eight years have passed since the Administrator promulgated, reviewed, or  
5 revised NSPSs under CAA section 111, 42 U.S.C. § 7411, for Bulk Gasoline Terminals.

6 b. The Administrator has not completed the reviews required by section CAA 111(b)(1)(B),  
7 42 U.S.C. § 7411(b)(1)(B), for Bulk Gasoline Terminals.

8 c. The Administrator has not promulgated a revised final rule or determination pursuant to  
9 CAA section 111(b)(1)(B) reflecting a timely review of its prior NSPS for Bulk Gasoline Terminals.

10 24. Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants

11 a. More than eight years have passed since the Administrator promulgated, reviewed, or  
12 revised NSPS under CAA section 111, 42 U.S.C. § 7411, for Electric Arc Furnaces and Argon-Oxygen  
13 Decarburization Vessels in Steel Plants.

14 b. The Administrator has not completed the reviews required by CAA section 111(b)(1)(B),  
15 42 U.S.C. § 7411(b)(1)(B), for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in  
16 Steel Plants.

17 c. The Administrator has not promulgated a revised final rule or determination pursuant to  
18 section 111(b)(1)(B) reflecting a timely review of its prior NSPS for Electric Arc Furnaces and Argon-  
19 Oxygen Decarburization Vessels in Steel Plants.

20  
21 **Failure to Review NESHAPs**

22 25. Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout  
23 Stations)

24 a. More than eight years have passed since the Administrator promulgated emission  
25 standards under CAA section 112, 42 U.S.C. § 7412, for Gasoline Distribution Facilities (Bulk Gasoline  
26 Terminals and Pipeline Breakout Stations).

1           b. The Administrator has not completed the reviews required by CAA section 112(d)(6), 42  
2 U.S.C. § 7412(d)(6), for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline  
3 Breakout Stations).

4           c. The Administrator has not promulgated a revised final rule or determination pursuant to  
5 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6) reflecting a timely review of its prior NESHAPs for  
6 Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

7           26. Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

8           a. More than eight years have passed since the Administrator promulgated emission  
9 standards under CAA section 112, 42 U.S.C. § 7412, for Gasoline Distribution Bulk Terminals, Bulk  
10 Plants, and Pipeline Facilities.

11           b. The Administrator has not completed the reviews required by CAA section 112(d)(6), 42  
12 U.S.C. § 7412(d)(6), for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.

13           c. The Administrator has not promulgated a revised final rule or determination pursuant to  
14 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6) reflecting a timely review of its prior NESHAPs for  
15 Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.

16  
17           27. Iron and Steel Foundries Area Sources

18           a. More than eight years have passed since the Administrator promulgated emission  
19 standards under CAA section 112, 42 U.S.C. § 7412, for Iron and Steel Foundries Area Sources.

20           b. The Administrator has not completed the reviews required by CAA section 112(d)(6), 42  
21 U.S.C. § 7412(d)(6), for Iron and Steel Foundries Area Sources.

22           c. The Administrator has not promulgated a revised final rule or determination pursuant to  
23 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6) reflecting a timely review of its prior NESHAPs for Iron  
24 and Steel Foundries Area Sources.

25  
26           28. Wood Preserving Area Sources

27           a. More than eight years have passed since the Administrator promulgated emission  
28 standards under CAA section 112, 42 U.S.C. § 7412, for Wood Preserving Area Sources.

1           b. The Administrator has not completed the reviews required by CAA section 112(d)(6), *id.*  
2 § 7412(d)(6), for Wood Preserving Area Sources.

3           c. The Administrator has not promulgated a revised final rule or determination pursuant to  
4 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6) reflecting a timely review of its prior NESHAPs for  
5 Wood Preserving Area Sources.

## 6 **ALLEGATIONS OF INJURY**

7           29. Plaintiff and its members and constituents have been, are being, and will continue to be  
8 harmed by the Administrator's failures to take the actions required by CAA sections 111(b)(1)(B) and  
9 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), for the Source Categories enumerated in Paragraph  
10 1, Table A and Table B, above, as further explained herein.

11           30. EPA has determined that each of the Source Categories enumerated in paragraph 1, Table  
12 A causes or contributes significantly to air pollution which may be anticipated to threaten public health  
13 or welfare. 48 Fed. Reg. 37578, (August 18 1983), (Bulk Gasoline Terminals), 49 Fed. Reg. 43845,  
14 (Oct. 31, 1984) (Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants).

15           31. EPA has listed each of the Source Categories enumerated in Paragraph 1, Table B, above,  
16 as major sources or area sources of hazardous air pollutants. Initial List of Categories of Sources Under  
17 Section 112(c)(1) of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 31,576 (July 16, 1992);  
18 National Emission Standards for Hazardous Air Pollutants: Revision of Initial List of Categories of  
19 Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of  
20 1990, 61 Fed. Reg. 28,197 (June 4, 1996); National Emission Standards for Hazardous Air Pollutants:  
21 Revision of Source Category List and Schedule for Standards Under Section 112 of the Clean Air Act,  
22 64 Fed. Reg. 63,025 (Nov. 18, 1999)

23           32. Sources in the Source Categories in Table B emit hazardous air pollutants regulated  
24 under section 112, 42 U.S.C. § 7412. EPA has recognized that the pollutants emitted by these sources  
25 include, but are not limited to, metals, such as lead, mercury, chromium, and nickel; and organic  
26 compounds, such as benzene and methylene chloride. *See, e.g.*, 72 Fed. Reg. 38864 (July 16, 2007); 73  
27 Fed. Reg. 1916 (January 10, 2008); 73 Fed. Reg. 226 (January 2, 2008); Congress determined these  
28

1 pollutants are hazardous when it listed them and required EPA to regulate sources that emit them. 42  
2 U.S.C. § 7412(b)(1), (c)(d).

3 33. EPA has recognized that the hazardous air pollutants emitted by sources in the Source  
4 Categories can cause serious acute and chronic human health effects. Breathing some of these pollutants  
5 can cause cancer. EPA has recognized that carcinogens have no safe level of human exposure. S. Rep.  
6 No. 101-228 at 175 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3560 (“Federal Government health  
7 policy since the mid-1950s has been premised on the principle that there is no safe level of exposure to a  
8 carcinogen.”). Exposure to hazardous air pollutants emitted by sources in the Source Categories has  
9 adverse health effects which may include respiratory, neurological, developmental, and reproductive  
10 harm, damage to bodily organs and the central nervous system, and cancer, as well as other health  
11 effects. Some of the hazardous air pollutants emitted from the sources in the Source Categories persist in  
12 the environment or bioaccumulate. For example, one pollutant emitted from the sources in the Source  
13 Categories is mercury. 73 Fed. Reg 226 (January 2, 2008). Pollutants, such as mercury, that persist or  
14 bioaccumulate in the environment can harm human health when people are exposed through routes other  
15 than breathing the pollution, such as after pollutants fall on the soil and children are exposed through  
16 playing in the soil, or when people consume fish, shellfish, breast-milk, or other food in which such  
17 pollutants have accumulated. *See, e.g.*, EPA, Mercury: Basic Information,  
18 [https://19january2017snapshot.epa.gov/mercury/basic-information-about-mercury\\_.html](https://19january2017snapshot.epa.gov/mercury/basic-information-about-mercury_.html). In addition,  
19 EPA has found that such pollutants can harm fish and other wildlife. *See, e.g.*, EPA, Mercury:  
20 Environmental Effects, [https://19january2017snapshot.epa.gov/mercury/basic-information-about-](https://19january2017snapshot.epa.gov/mercury/basic-information-about-mercury_.html#ecological)  
21 [mercury\\_.html#ecological](https://19january2017snapshot.epa.gov/mercury/basic-information-about-mercury_.html#ecological).

22 34. Plaintiff’s members and constituents live, work, travel, recreate, and engage in a wide  
23 variety of other activities near sources in the Source Categories. Plaintiff’s members and constituents  
24 suffer exposure and other harm to their health, recreational, aesthetic, educational, professional, and  
25 other interests due to breathing the hazardous air pollutants emitted by sources in the Source Categories,  
26 by consuming food contaminated with pollutants from sources in the Source Categories, and by other  
27 pathways of exposure.  
28

1           35. Plaintiff's members and constituents are concerned that hazardous air pollutants are  
2 present in the locations where they live, work, travel, recreate, and engage in other activities. These  
3 reasonable concerns about their increased exposure from such activities and other resulting harms from  
4 such exposure diminish their enjoyment of activities and areas they previously enjoyed or would like to  
5 continue to engage in or use and thereby harm their recreational, aesthetic, educational, professional, and  
6 other interests.

7           36. Further, sources in the Source Categories emit pollutants that can damage surrounding  
8 wildlife, plants, waters, land, communities, and ecosystems, and thus also harm Plaintiff's members' and  
9 constituents' recreational, aesthetic, educational, professional, and other interests in those wildlife,  
10 plants, waters, land, communities, or ecosystems. Pollutants emitted by sources in the Source Categories  
11 include volatile organic compounds, which contribute to ambient ozone that can harm plant species and  
12 can result in changes in wildlife habitat. EPA, Ozone Pollutants, <http://epa.gov/ozone-pollution>. EPA  
13 has found that ambient ozone can cause reduction of lung function, respiratory symptoms (e.g., cough,  
14 chest pain, throat and nose irritation), increased lung inflammation, increased lung permeability, and  
15 airway hyperresponsiveness. EPA, Integrated Science Assessment for Ozone and Related Photochemical  
16 Oxidants at 6-1 to 6-3 (Feb. 2013), available at  
17 [http://ofmpub.epa.gov/eims/eimscomm.getfile?p\\_download\\_id=511347](http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=511347). EPA has found that ozone can  
18 also damage vegetation including forests, commercial trees, and agricultural crops, and result in damage  
19 to ecosystems. *See, e.g., id.* at 9-3. These changes can lead to wildlife avoidance of certain areas, as well  
20 as a reduction in biodiversity or other changes to a local community's ecosystem. Ecosystem changes  
21 make it more difficult for Plaintiff's members and constituents to observe, fish, cultivate, study,  
22 research, or write about wildlife, plants, or ecosystems.

23           37. Plaintiff and its members and constituents suffer additional harm because they do not  
24 have information, published findings, or determinations from the Administrator regarding the best  
25 available current pollution control methods, practices, and technologies to achieve emission reductions,  
26 the health and environmental risks that remain after application of the existing standards, or other  
27 information relevant to the need for stronger emission standards for the sources in the Source  
28 Categories. This information would be provided to Plaintiff, its members and constituents, and all other

1 interested members of the public as a result of the Administrator’s required actions pursuant to CAA  
2 sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6). See, e.g., 42 U.S.C. §  
3 7607(d)(3)-(6) (describing notice and informational disclosures required as part of rulemakings under  
4 section 112, 42 U.S.C. § 7412). If Plaintiff and its members and constituents had this information, they  
5 would use it to advocate for stronger health and environmental protections, to educate members,  
6 constituents, and the public, and to protect themselves and their families from hazardous air pollutants  
7 and affected land, water, and food. The denial of this information hampers the ability of Plaintiff and its  
8 members and constituents to take actions to protect their health and communities, diminishes their  
9 enjoyment of activities in their daily life, and impairs Plaintiff’s abilities to perform the public education  
10 and advocacy activities vital to fulfilling their organizational missions.

11 38. Plaintiff and its members and constituents suffer harm because they are denied the  
12 opportunity to present comments and arguments to EPA and have them considered by EPA as part of the  
13 overdue CAA section 111(b)(1)(B) and section 112(d)(6) rulemakings. 42 U.S.C. §§ 7411(b)(1)(B),  
14 7412(d)(6). For these rulemakings, EPA is required to provide a period for public comment during  
15 which “any person” is allowed “to submit written comments, data, or documentary information.” 42  
16 U.S.C. § 7607(d)(3), (5). In addition, EPA is required to give “interested persons an opportunity for the  
17 oral presentation of data, views, or arguments.” 42 U.S.C. § 7607(d)(5). The Administrator’s failure to  
18 conduct the overdue rulemakings denies Plaintiff and its members and constituents the opportunity to  
19 advocate for greater health protections and emissions reductions, and to have EPA consider such  
20 comments in taking the final actions required by section 111(b)(1)(B) and section 112(d)(6), 42 U.S.C.  
21 §§ 7411(b)(1)(B), 7412(d)(6). Deprivation of the ability to present comments and arguments and have  
22 them considered by EPA impairs Plaintiff and its members’ and constituents’ ability to serve and protect  
23 their interests and fulfill their organizational missions.

24 39. Plaintiff and its members and constituents suffer harm because the Administrator has not  
25 issued a final rule or determination under section 111(b)(1)(B) and section 112(d)(6), 42 U.S.C. §§  
26 7411(b)(1)(B), 7412(d)(6), addressing matters these provisions require, as discussed above. Any such  
27 rule or determination would be judicially reviewable. See 42 U.S.C. § 7607(b); see also 42 U.S.C. §  
28

1 7607(d). Deprivation of the right of judicial review harms the ability of Plaintiff and its members and  
2 constituents to protect their interests and fulfill their organizational missions.

3 40. The Administrator's failures to take actions required by section 111(b)(1)(B) and section  
4 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), deprive Plaintiff's members and constituents of the  
5 cleaner air that would result from those actions. Consequently, Defendant prolongs and increases  
6 Plaintiff's members' and constituents' exposure to hazardous air pollutants and the related and resulting  
7 health, recreational, aesthetic, and other injuries, as described above. Defendant also prolongs and  
8 increases the hazardous air pollutant exposure of wildlife, plants, water, land, local communities, and  
9 ecosystems, resulting in harm to Plaintiff's members' and constituents' interests, as described above.  
10 Emissions reductions required under section 111(b)(1)(B) and section 112(d)(6), 42 U.S.C. §§  
11 7411(b)(1)(B), 7412(d)(6), would reduce these exposures, and would reduce the related health,  
12 recreational, aesthetic, and other harms suffered by Plaintiff's members and constituents.

13 41. By not taking the actions required by section 111(b)(1)(B) and section 112(d)(6), 42  
14 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), the Administrator deprives Plaintiff and its members and  
15 constituents of information, published findings, and determinations, as described above. *See, e.g.*, 42  
16 U.S.C. § 7607(d)(3)-(6). In addition, the Administrator's failures to take the actions required by section  
17 111(b)(1)(B) and section 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), deprive Plaintiff and its  
18 members and constituents of the opportunity to receive judicial review of the lawfulness of the final  
19 EPA actions. *See* 42 U.S.C. § 7607(b). These failures make it more difficult for Plaintiff and its  
20 members and constituents to advocate for health and environmental protection from hazardous air  
21 pollutants, to shield themselves, their families, and other community members from exposure to such  
22 pollutants, to protect their health, recreational, aesthetic, and other interests, and to be able to enjoy  
23 activities in their daily life without concerns about exposure to hazardous air pollutants. These failures  
24 also impair Plaintiff's abilities to perform the public education and advocacy activities vital to fulfilling  
25 its public health missions.

26 42. For the foregoing reasons, the failures complained of herein cause Plaintiff and its  
27 members and constituents injuries for which they have no adequate remedy at law. Granting the  
28 requested relief would redress these injuries.

1 **CLAIMS FOR RELIEF**

2 43. The allegations of all foregoing paragraphs are hereby incorporated as if set forth fully  
3 herein.

4 **Claim 1: Violations of section 111(b)(1)(B) of the Clean Air Act**

5 44. Each of the Administrator’s ongoing failures to review and either revise or issue a  
6 revision determination regarding the emission standards for each of the Source Categories enumerated in  
7 Paragraph 1, Table A, above, in accordance with CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B),  
8 constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not  
9 discretionary” within the meaning of § 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), for each  
10 such source category.

11 45. Each day the Administrator fails to take these legally required actions, Defendant  
12 commits new, additional, and ongoing violations of his duties under CAA section 111(b)(1)(B), 42  
13 U.S.C. § 7411(b)(1)(B).

14 **Claim 2: Violations of section 112(d)(6) of the Clean Air Act**

15 46. Each of the Administrator’s ongoing failures to review and either revise or issue a  
16 revision determination regarding the emission standards for each of the Source Categories enumerated in  
17 Paragraph 1, Table B, above, in accordance with CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6),  
18 constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not  
19 discretionary” within the meaning of § 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), for each  
20 such source category.

21 47. Each day the Administrator fails to take these legally required actions, Defendant  
22 commits new, additional, and ongoing violations of its duties under section 112(d)(6), 42 U.S.C. §  
23 7412(d)(6).

24 **PRAYER FOR RELIEF**

25 48. WHEREFORE, Plaintiff respectfully requests, for each of the Source Categories  
26 enumerated in Paragraph 1, Table A, above, that the Court:

27 a. Declare that each of the Defendant Administrator’s failures to review and either revise  
28 standards promulgated under CAA section 112 or issue a final determination that such revision is not

1 necessary for each of the Source Categories pursuant to CAA section 111(b)(1)(B), 42 U.S.C. §  
2 7411(b)(1)(B), within eight years, constitutes a “failure of the Administrator to perform any act or duty  
3 under this chapter which is not discretionary with the Administrator” within the meaning of § 304(a)(2),  
4 42 U.S.C. § 7604(a)(2);

5           b. Order the Defendant Administrator to review and either revise the emission standards or  
6 issue a final determination that such revision is not necessary for each of the Source Categories pursuant  
7 to CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), in accordance with an expeditious deadline  
8 specified by this Court;

9           c. Declare that each of the Defendant Administrator’s failures to review and either revise  
10 standards promulgated under CAA section 112(d) or issue a final determination that such revision is not  
11 necessary for each of the Source Categories pursuant to section 112(d)(6), 42 U.S.C. § 7412(d)(6),  
12 within eight years, constitutes a “failure of the Administrator to perform any act or duty under this  
13 chapter which is not discretionary with the Administrator” within the meaning of CAA section  
14 304(a)(2), 42 U.S.C. § 7604(a)(2);

15           d. Order the Defendant Administrator to review the emissions standards for each of the  
16 Source Categories and either revise each emission standard or issue a final determination that such  
17 revision is not necessary pursuant to CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), in accordance with  
18 an expeditious deadline specified by this Court;

19           e. Retain jurisdiction to ensure compliance with this Court’s decree;

20           f. Award Plaintiff the costs of this action, including attorney’s fees; and,

21           g. Grant such other relief as the Court deems just and proper.

22  
23 DATED: August 7, 2018

Respectfully Submitted,

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26 s/Christopher Sproul  
27 Christopher Sproul  
28 Attorney for Plaintiff

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State PTF DEF 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 365 Personal Injury - Product Liability 625 Drug Related Seizure of Property 21 USC § 881 422 Appeal 28 USC § 158 375 False Claims Act
120 Marine 315 Airplane Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 423 Withdrawal 28 USC § 157 376 Qui Tam (31 USC § 3729(a))
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability 710 Fair Labor Standards Act 820 Copyrights 400 State Reapportionment
140 Negotiable Instrument 330 Federal Employers' Liability 720 Labor/Management Relations 830 Patent 410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits 340 Marine 345 Marine Product Liability 355 Motor Vehicle Product Liability 740 Railway Labor Act 835 Patent-Abbreviated New Drug Application 430 Banks and Banking
151 Medicare Act 350 Motor Vehicle 362 Personal Injury -Medical Malpractice 385 Property Damage Product Liability 751 Family and Medical Leave Act 840 Trademark 450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans) 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education 470 Racketeer Influenced & Corrupt Organizations
153 Recovery of Overpayment of Veteran's Benefits 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty 480 Consumer Credit
160 Stockholders' Suits 464 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement 490 Cable/Sat TV
190 Other Contract 465 Other Immigration Actions 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609 850 Securities/Commodities/Exchange
195 Contract Product Liability 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision
196 Franchise 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.